



Federal Communications Commission
Washington, D.C. 20554

July 11, 2003

DA 03-2275

Robert M. Gurss
Fletcher, Heald & Hildreth, PLC
1300 North 17th Street
11th Floor
Arlington, VA 22209

Dear Mr. Gurss:

This letter is in response to your letters dated March 7, 2003¹ and June 5, 2003,² on behalf of Mobex Communications, Inc. (Mobex). In the letters you request clarification that two Automated Maritime Telecommunications System (AMTS) transmitters that Mobex operates as fill-in sites will be protected from interference regardless of what co-channel interference protection standard the Commission ultimately requires geographic licensees to provide to site-based incumbents.

By way of background, in the *Fourth Report and Order* in PR Docket No. 92-257, released November 16, 2000, the Commission eliminated the application and engineering study requirements for AMTS fill-in stations, *i.e.*, new stations the interference contours of which do not encompass any land area beyond the composite interference contour of the licensee's existing system.³ In the concurrent *Third Further Notice of Proposed Rule Making*, the Commission proposed to transition the licensing of AMTS stations from a site-based approach to geographic licensing.⁴ Recognizing that its then current rules did not define a co-channel protection standard for AMTS stations, the Commission proposed to rely on the co-channel interference protection standard used in the 220-222 MHz band, *i.e.*, 10 dB protection to the incumbent's predicted 38 dBu contour.⁵ In its February 6, 2001 comments to the *Third Further Notice of Proposed Rule Making*, Mobex argued that incumbent systems should instead be protected on the basis of a 17 dBu service contour.⁶ In the *Fifth Report and Order* in PR Docket No. 92-257, released April 8, 2002, the Commission adopted rules to streamline the licensing process for AMTS stations by utilizing a geographic licensing approach,⁷ and adopted its proposed co-channel interference

¹ Letter dated Mar. 7, 2003 from Robert M. Gurss, counsel for Mobex Communications, Inc., to D'wana R. Terry, Chief, Public Safety and Private Wireless Division (Clarification Request).

² Letter dated June 5, 2003 from Robert M. Gurss, counsel for Mobex Communications, Inc., to D'wana R. Terry, Chief, Public Safety and Private Wireless Division (Clarification Supplement).

³ Amendment of the Commission's Rules Concerning Maritime Communications, *Fourth Report and Order and Third Further Notice of Proposed Rule Making*, PR Docket No. 92-257, 15 FCC Rcd 22585, (2000) (*Fourth Report and Order and Third Further Notice*); see 47 C.F.R. § 80.475(b).

⁴ *Fourth Report and Order and Third Further Notice*, 15 FCC Rcd at 22601 ¶ 30.

⁵ *Id.* at 22604 ¶ 35.

⁶ See Amendment of the Commission's Rules Concerning Maritime Communications, *Second Memorandum Opinion and Order and Fifth Report and Order*, PR Docket No. 92-257, 17 FCC Rcd 6685, 6700 ¶ 32 (2002).

⁷ *Id.* at 6695 ¶ 21.

standard, based on a 38 dBu contour.⁸ On August 23, 2002, Mobex filed a petition for reconsideration of the co-channel interference protection standard, which remains pending.

Mobex seeks clarification that its existing fill-in sites will be protected from interference regardless of what standard the Commission ultimately adopts in PR Docket No. 92-257. It requests clarification at this time as it is about to authorize substantial equipment upgrades to the relevant sites, but it, and its vendors and customers, are reluctant to commit new resources to these sites without assurances that they will be afforded sufficient interference protection.

In your March 7 letter, you state that in 2001 Mobex placed into operation putative fill-in sites at Boston, Massachusetts, and Washington, D.C.⁹ The Boston and Washington sites are within both the 17 dBu contour and 38 dBu contour of licensed facilities at Rehobeth, Massachusetts, and Manassas, Virginia, respectively. Your March 7 letter appeared to indicate that the Boston and Washington sites operate at 1000 watts effective radiated power (ERP).¹⁰ Your June 5 letter, however, clarified that the Boston site operates at 199 watts ERP.¹¹ At a June 5, 2003 meeting, Mr. Scot Stone of my staff requested copies of the notifications for the sites that Mobex sent to affected broadcasters as required by Section 80.475(b) of the Commission's Rules.¹² By electronic mail dated June 7, 2003, Mobex stated that no notifications were ever sent, because there were no stations that required notification.¹³ Subsequently, in a June 12, 2003 electronic mail message, Mobex stated that it believed that the required notifications were sent, but that it had been "unable to locate documentation of those notifications."¹⁴ Mobex stated that, out of an "abundance of caution," it had sent new notifications to the stations which required notification,¹⁵ and subsequently provided copies of the notifications to Mr. Stone.¹⁶ The technical information attached to that electronic mail message indicated that the Washington site operates at 75 watts ERP.

⁸ The Commission concluded that the proponents of a more conservative standard did not present technical data demonstrating that this standard would not provide sufficient protection. *Id.* at 6700-01 ¶¶ 32-33.

⁹ Clarification Request at 1. Mobex later stated that the Boston site has been in place "since at least June 2001." Electronic mail message dated June 24, 2003 from John Reardon to Scot Stone.

¹⁰ Clarification Request at 3.

¹¹ Clarification Supplement at 2. In subsequent discussions with the Public Safety and Private Wireless Division, you stated that the 1000 watt ERP indicated in the March 7 letter represented the level of co-channel interference protection that the letter requested for the Boston and Washington sites, rather than their actual operating level.

¹² 47 C.F.R. § 80.475(b).

¹³ Electronic mail message dated June 7, 2003 from Paul vander Heyden to Ghassan Khalek.

¹⁴ Electronic mail message dated June 12, 2003 from Robert M. Gurs to Scot Stone.

¹⁵ *Id.*

¹⁶ Section 80.475(b) of the Commission's Rules states that the notifications must include the station's "technical characteristics." 47 C.F.R. § 80.475(b). The notifications that Mobex provided to Mr. Stone indicated the stations' locations and frequencies, but no other technical information (such as antenna height and directionality, or transmitter power) that broadcasters could need in order to determine whether their operations will be affected. Accordingly, we do not believe that the notifications provided thus far fully satisfy the requirements of Section 80.475(b), and, as a result, we expect Mobex to supplement the notifications with additional technical information.

Thus, the information now before us indicates that the Boston site operates at 199 watts ERP, and the Washington site operates at 75 watts ERP. It thus appears that both the 17 dBu contour and 38 dBu contours of both sites generally are encompassed by the 17 dBu and 38 dBu contours of Mobex's existing system, respectively, except over water. Based on the circumstances presented, we conclude that the Boston and Washington sites are entitled to interference protection insofar as they are "fill-in sites" in conformance with the Commission's rules. In order to qualify as a fill-in site, the plain language of Section 80.475(b) of the Commission's Rules requires not only that the site be located within the interference contour of one or more licensed stations, but that the fill-in site's interference contour be fully encompassed by the composite interference contour of the licensee's existing system.¹⁷ Thus, we believe that the Boston and Washington sites are permissible fill-in sites, and entitled to co-channel interference protection from a geographic licensee, if their interference contours do not extend beyond the interference contours of Mobex's licensed stations. Assuming that Mobex operates the Boston and Washington sites at power levels that result in interference contours within the interference contour of its licensed stations, any geographic licensee will be required to protect the sites. Moreover, to the extent any small overlap over land is attributable to Mobex's reliance, in the absence of clear guidance in the Commission's rules at the time operations commenced, on a 17 dBu contour, we believe that a waiver might be an appropriate vehicle for providing interference protection to the stations' current operations as described above. Until the resolution of the pending petitions for reconsideration in PR Docket No. 92-257, however, it is impossible to determine whether any such relief is necessary.

I trust that this letter is responsive to your inquiry.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

¹⁷ *Id.*

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CC: PSPWD Chron
 D Terry
 R Melson
 H Zeiler
 J Borkowski
 J Schauble
 S Stone
 P Daronco
 K Fickner
 G Khalek
 K Kleppinger